

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

RONALD CURTISS GRUMBKOW,)	
)	
Petitioner,)	
)	
v.)	Docket No. 2984-14.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

Pursuant to the opinion of the Court as set forth in the pages of the transcript of the proceedings at Washington, D.C., on March 6, 2015, it is

ORDERED that the Clerk of the Court shall transmit herewith to petitioner and to respondent a copy of the pages of the transcript of the trial in the above case before undersigned judge at Washington, D.C., containing his oral findings of fact and opinion rendered at the trial session at which the case was heard.

In accordance with the oral findings of fact and opinion, decision will be entered under Rule 155.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
March 20, 2015

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1 P R O C E E D I N G S

2 Bench Opinion by Judge David Gustafson

3 March 6, 2015

4 Ronald Curtis^S_A Grumbkow v. Commissioner

5 Docket No. 2984-14

6 THE COURT: The Court has decided to render the
7 following as its oral Findings of Fact and Opinion in
8 this case. This Bench Opinion is made pursuant to
9 the authority granted by section 7459(b) of the
10 Internal Revenue Code (26 U.S.C.), and Tax Court Rule
11 152; and it shall not be relied on as precedent in
12 any other case.

13 By a notice of deficiency dated November 18,
14 2013 (Ex. 2-J), the Internal Revenue Service ("IRS")
15 determined a deficiency in the Federal income tax of
16 petitioner Ronald Curtiss Grumbkow for the year 2011.
17 After concession of one issue by Mr. Grumbkow, the
18 remaining issue for us to decide is whether he
19 received discharge-of-indebtedness income that he
20 failed to report. For the reasons explained below,
21 we hold that he did not.

22 Trial of this case was conducted on March 2,
23 2015, in Washington, D.C. Mr. Grumbkow represented
24 himself; and respondent, the Commissioner of the IRS,
25 was represented by William Gregg.

FINDINGS OF FACT

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1 Alleged Amoco credit card debt

2 In the 1990s Mr. Grumbkow had an Amoco credit
3 card which he used to pay for gasoline and other auto
4 expenses. He apparently made his latest payment on
5 that card on August 8, 1999. Supposedly there
6 remained an unpaid balance on the card totaling
7 \$1,780. It seems that Amoco assigned the debt to an
8 entity called "A.F.S." on April 27, 2001. A.F.S. may
9 have gone into bankruptcy, because Portfolio Recovery
10 Associates ("PRA") apparently acquired Mr. Grumbkow's
11 alleged debt on March 16, 2006, when PRA "purchased
12 bankruptcy account". It appears that PRA first
13 attempted to contact Mr. Grumbkow by telephone on
14 December 13, 2006--i.e., more than seven years after
15 his last payment. Thereafter it allegedly attempted
16 repeatedly to reach Mr. Grumbkow by telephone. The
17 foregoing facts--if they are facts--are derived from
18 a document (Ex. 6-R) provided by PRA to the
19 Commissioner and offered into evidence at trial by
20 the Commissioner without any explanation by any
21 individual, other than a written authentication
22 pursuant to Federal Rule of Evidence 902(11).

22 2011 income and tax return

23 In 2011 Mr. Grumbkow received wages of \$20,631
24 from Wal-Mart and received Social Security benefits
25 in the amount of \$28,980. He timely filed his 2011

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1 tax return in April 2012. (Ex. 1-J.) On that
2 return, Mr. Grumbkow reported the Wal-Mart wages as
3 income but did not report any portion of the Social
4 Security benefits, nor did he report any discharge of
5 indebtedness.

6 Information returns

7 On February 23, 2011, the IRS had received from
8 PRA a Form 1099-C (see Ex. 2, p. 3), reporting
9 discharge-of-indebtedness income to Mr. Grumbkow in
10 the amount of \$1,780. (The form did not mention
11 Amoco or A.F.S.) Mr. Grumbkow did not receive any
12 copy of the Form 1099-C.

13 From the Social Security Administration, the IRS
14 received a Form 1099-SSA giving notice of the Social
15 Security benefits that had been paid to Mr. Grumbkow.

16 The IRS compared that information to Mr.
17 Grumbkow's tax return, and determined (correctly)
18 that he had not reported the Social Security benefits
19 nor any discharge of indebtedness income.

19 Tax Court proceedings

20 On November 18, 2013, the IRS issued its notice
21 of deficiency for 2011 (Ex. 2-J), determining the
22 deficiency of tax resulting from the unreported
23 income. Mr. Grumbkow timely mailed his petition to
24 this Court on February 13, 2014. At that time he
25 resided in North Carolina.

1 At trial Mr. Grumbkow conceded the taxability of
2 a portion of the Social Security benefits. He had
3 not reported any of the benefits as income, because
4 he thought they were not taxable. Upon learning
5 otherwise, he assented.

6 As for the discharge-of-indebtedness income, Mr.
7 Grumbkow had learned from the IRS in the weeks before
8 trial, for the first time, about the alleged Amoco
9 debt from the 1990s. At trial Mr. Grumbkow testified
10 very convincingly that he did not know whether he had
11 an unpaid balance due to Amoco from the 1990s, had
12 not received phone calls from PRA, and did not know
13 what PRA is.

14 OPINION

15 I. Burden of proof

16 As a general rule, the IRS's determination is
17 presumed correct, and the taxpayer bears the burden
18 to prove any adjustment to the income the IRS
19 determined. See Rule 142(a). In the case of the
20 supposed discharge of Amoco credit card debt,
21 however, the IRS relied on a Form 1099-C submitted by
22 a third party to attribute income to Mr. Grumbkow.
23 The IRS may indeed rely on information returns (Forms
24 W-2 and 1099) from third-party payors when
25 determining a taxpayer's tax liability. See, e.g.,
Cabirac v. Commissioner, 120 T.C. 163, 167 (2003).

1 But if "[i]n any court proceeding ... a taxpayer
2 asserts a reasonable dispute with respect to any item
3 of income reported on an information return filed
4 with the Secretary ... and the taxpayer has fully
5 cooperated with the Secretary ..., the Secretary
6 shall have the burden of producing reasonable and
7 probative information concerning the deficiency in
8 addition to such information return." Sec. 6201(d).

9 II. Discharge-of-indebtedness income

10 Section 61(a)(12) provides that gross income
11 includes "[i]ncome from discharge of indebtedness."
12 Section 108 provides circumstances in which the
13 discharge of indebtedness is not included in income,
14 and those circumstances include the insolvency of the
15 debtor. See sec. 108(a)(1)(B). For purposes of the
16 creditor's obligation to file a Form 1099, 26 C.F.R.
17 sec. 1.6050P-1(b)(2)(i)(H) and (b)(2)(iv) provide
18 that the events triggering a discharge of
19 indebtedness include in some circumstances the
20 passage of a period of 36 months (i.e., three years)
21 without any payment by the debtor.

22 III. Discussion

23 We hold that Mr. Grumbkow has asserted a
24 reasonable dispute as to the alleged discharge-of-
25 indebtedness income reported on the Form 1099-C from
PRA. The Commissioner was unable to proffer any

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1 "reasonable and probative information" to show the
2 debt or its discharge. Consequently, on this issue
3 Mr. Grumbkow prevails because the Commissioner could
4 not carry his burden of production.

5 We therefore need not address the issue of Mr.
6 Grumbkow's apparent insolvency in 2011 (which would
7 negate discharge-of-indebtedness income; see sec.
8 108(a)(1)(B)), nor the question whether any discharge
9 took place not in 2011 but years earlier, pursuant to
10 the section 6050P regulations, nor the question
11 whether the statute of limitations would have
12 rendered the alleged 1999 debt uncollectible long
13 before 2011 in any event.

14 So that Mr. Grumbkow's 2011 tax liability can be
15 recalculated to reflect the determination that he did
16 not receive discharge-of-indebtedness income, and to
17 re-calculate the taxable portion of his Social
18 Security benefits, decision will be entered pursuant
19 to Rule 155.

20 This concludes the Court's oral Findings of Fact
21 and Opinion in this case.

22 (Whereupon, at 12:30 p.m., the above-
23 entitled matter was concluded.)
24
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